

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 453 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI and
MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ASHOK KARAMSI GOHIL

Versus

STATE OF GUJARAT

Appearance:

MR ND NANAVATI for Petitioner
MR B.D. DESAI, A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE S.M.SONI and

MR.JUSTICE M.C.PATEL

Date of decision: 28/01/98

ORAL JUDGEMENT

The appellant-accused in Sessions Case no.73/1988 has challenged the judgment and order of conviction passed by the learned Sessions Judge on 30th June, 1989. The learned Sessions Judge by the said judgment and order has held appellant guilty of offences punishable under

Section 302 of the Indian Penal Code and Section 135 of the Bombay Police Act and has awarded R.I. for life under Section 302 of the Indian Penal Code. No separate sentence is awarded for offence under Section 135 of the Bombay Police Act.

Facts leading to the prosecution are as under:

The appellant is son of one Karamshi Sagar. The said Karamshi Sagar (now deceased) had married with one Bai Mani despite the first wife i.e. mother of appellant being alive. The appellants are two brothers. The appellant was annoyed and enraged by this act of his father. On 20th July, 1988 deceased Karamshi and his wife Maniben had gone to witness picture " Sangam" in Deluxe Talkies in the show of 2.30 p.m. to 6.00 p.m. Both had occupied chair in balcony. It is the case of the prosecution that accused had also come to witness picture on that day in that show. When he saw deceased and Bai Mani viewing the picture just after interval, he went to deceased and as he had come with a dagger, he inflicted repeated blows on Karamshi. Karamshi told him that Ashok(accused) leave me, however, he went on inflicting blows. Bai Mani who was sitting besides deceased ran out of cinema theatre. Thereafter, accused went away and Karamshi was taken to the hospital where he was declared dead. It is the case of the prosecution that after inflicting blows when accused was coming out of the theatre alongwith other visitors he was caught hold of by Constable Vinodbhai and was taken to Bedipara Police Chowky. On his reaching Bedipara Chowky, Constable in charge of that Chowky was informed about some disturbance in the Deluxe Cinema. The said Karamshi informed B-Division Police Station of the same. PW.15 Chimanlal Trikamlal Sonara Police Inspector, B-Division on receipt of the information reached Deluxe Cinema from where he learned that injured is taken to hospital. He therefore reached hospital, where he learnt that injured had died. Before PW 15 Sonara reached the hospital, Police Head Constable on hospital duty Mr. Mastaram Odhavdas had informed B-Division Police Station that Karamshi Sagar resident of Bedipara, Badvasher, Rajkot who was injured as a result of blows with dagger(chari) in balcony of Deluxe Cinema had died. Mr. Sonara, PW. 15 then recorded the statement of Bai Mani and treating it to be a complaint send it to B-Division Police Station to treat that complaint as First Information Report and registered the offence. After completing necessary formalities he again went to Deluxe Cinema from where on completion of further formalities went to Bedipara Police Chowky where he arrested the accused who was in

possession of Constable Vinodbhai. On offence being registered, necessary investigation was carried out and completed and the appellant was charge-sheeted in the Court of Judicial Magistrate, First Class, who in his turn committed the accused to the Court of Sessions.

The learned Sessions Judge framed charge Exh.1 against the accused. The accused pleaded not guilty and prayed to be tried. The prosecution examined all necessary witnesses and proved documents to prove charges levelled against the accused. On completion of the prosecution witnesses further statement of the accused under Section 313 of the Cr.P.C. was recorded from where it appears that the defence of the accused is of total denial.

The learned Sessions Judge after hearing the learned Advocates for the prosecution and defence found appellant guilty for the charges levelled against him and awarded sentence referred to hereinabove. This order of conviction is under challenge in this appeal.

Learned Sr. Advocate Mr. Nanavaty has challenged the conviction mainly on the grounds, namely, that the conviction cannot be based on circumstantial evidence, when the prosecution is initially based on direct evidence against the accused. He contended that if direct evidence does not inspire confidence, then prosecution shifting the case on circumstantial evidence is bad. He further contended that in the instant case even the circumstantial evidence does not complete the chain of circumstances to lead to a conclusion consistent with the hypothesis of the guilt of the accused. Mr. Nanavaty further contended that the evidence of Constable Vinodbhai PW.12 ought to have been rejected as it does not inspire any confidence inasmuch as he has acted in a manner not expected of a Police Constable. Mr. Nanavaty further contended that it is not expected of a Police Constable to catch hold of a person who is suspected of a charge of murder for about a period of seven hours in a Police Chowky without intimating the superior officer or complaining against him before the superior officer. Mr. Nanavaty therefore contended that the order of conviction should be set aside and appellant be acquitted.

Mr. B.D. Desai, learned A.P.P. supports the judgment of the learned Sessions Judge. Mr. Desai contended that there is no prohibition in law much less in criminal law that if one set of evidence be it a direct evidence if required to be rejected, then conviction cannot be based on other set of the evidence

if both sets can be relied separately and distinctly. Mr. Desai further contended that prosecution has been able to establish a complete chain of circumstances which leads to infer to hypothesis of guilt of the accused. Mr. Desai further contended that evidence of Constable Vinod PW.12 despite some lacunas does inspire confidence to accept the same. The conduct of PW.3 is not that unnatural which requires to reject his evidence, more particularly, when a short question in the case would be whether the accused came to be arrested at 5 p.m. or 12.00 midnight of that day. Mr. Desai, therefore, contended that judgment and order of the learned Sessions Judge should be confirmed.

The learned Sessions Judge has not accepted the evidence of Maniben, PW.2 alleged wife of deceased Karamshi. We need not detain ourselves anymore to accept that finding of the learned Sessions Judge. We do not want to enter into the correctness or otherwise of the rejection of the evidence of Bai Mani, PW2. If the evidence of Maniben is to be accepted, then the case may be one based on eye witnesses but as we agree with the learned Sessions Judge and evidence of Bai Mani is not accepted. Ignoring the evidence of PW 2 Bai Mani, we have to see whether the conviction recorded by the learned Sessions Judge on circumstantial evidence is acceptable or not.

Learned Advocate Mr. Nanavaty has firstly attacked the conviction contending that when direct evidence is not accepted by the learned Sessions Judge, conviction cannot be based on circumstantial evidence. Mr. Nanavaty wanted to contend that even if circumstantial evidence is cogent, convincing and reliable then also the same is not beyond doubt as direct evidence is not accepted by the learned Sessions Judge. We fail to understand and appreciate this contention of Mr. Nanavaty. To hold good this contention, Mr. Nanavaty ought to have satisfied the Court that the direct evidence relied on by the prosecution and the circumstantial evidence which is on record both form one integral part of the prosecution story and they cannot exist separately. If that be so, then in our opinion, the contention raised by Mr. Nanavaty requires further consideration. In our opinion, Mr. Nanavaty is not able to show that direct evidence on which the prosecution has relied on is one integral part of or inseparable from the circumstantial evidence led and relied on by the prosecution. As it is not so, we are not able to accept this contention of Mr. Nanavaty. However, we are required to consider the contention of Mr. Nanavaty that

the circumstantial evidence relied on by the prosecution do not form a complete chain to lead an inference consistent with the hypothesis of guilt of the accused. To appreciate this, it would be necessary to refer to the evidence on record. The fact remains that Karamshi Sagar was brought to the hospital in an ambulance car from Deluxe Cinema where during treatment he had died. This fact is established from the evidence of PW.4 Mansoor. PW4 in his evidence has stated"by the time I reached back at cinema ambulance had come. Then injured was taken to the Civil Hospital in ambulance." This part is also supported by PW5 Kishor and PW6 Jaysukhlal. The defence has practically not disputed this fact of injured being taken from Deluxe Cinema to Civil Hospital.

It is not clear from the evidence whether said Karamshi died on the way to hospital or he died after he reached the hospital. However, in the hospital on examination, he was found dead. As he was found dead autopsy was performed. Dr. Deepak Shantilal Mehta, PW.3 who performed autopsy has stated that there were as many as 12 external injuries and five internal injuries which are as under:

External injuries

1. I.W. 3/4" over Rt.side of lower lip transverse muscle deep with clean cut margin.
2. 6 I.Ws. 1/2" x M.D x 1/8" over lateral aspect of Lt.side of chest and abdo.verticle.
3. One stab wound cavity deep 1" x 1/8" over 6th I/C space at Lt. midclavical line transverse.
4. One stab wound 3/4" x 1/8" over epigasture region cavity deep.
5. I.W. 3/4" x 1/8" over 7th I/C space at Midclavical line oblique muscle deep.
6. 2 I.Ws. 3/4" x M.D. x 1/8" over lateral aspect Rt. arm M/3 oblique.
7. I.W. 1" x 1/8" M.D. over Lt. shoulder.
8. 10 I.Ws over Lt.arm and forearm size varies from 1/2" to 2".
9. 6 I.Ws. over Rt. elbow and forearm 1/2" x M.D. x 1/2"

10. 2 I.Ws. 1" x 1" x M.D. L/3 Lt. thigh.

11. I.W. 1/2" x 1/8" x M.D. over U/3 Lt. leg.

12. I.W. 1" x 1/8" over Lt. ear.

All the above wounds have clean cut margin.

Internal injuries

1. As per injury nos.2,3 & 5 mentioned in Sr.No.17 of P.M.Note. Injury over pleura corresponding to injury no.3 in Sr.No.17 of P.M.Note.
2. Lt.lung collapse with haemothorex and tear over lung corresponding to injury no.3 mentioned in Sr.No.17 of P.M.Note.
3. Injury no.2 and 4 as mentioned in Sr.No.17 of P.M.Note.
4. Peritonened tear corresponding to injury no.4 mentioned in Sr.No.17 of P.M.Note.
5. One perforation over anterior wall of stomach 1/2".

According to PW.3 external injury no.3 was sufficient in the ordinary course of nature to cause death. The cause of death as opined by the doctor is cardio respiratory failure due to haemorrhage, shock as a result of injury to vital organ - lungs and other multiple injuries. Thus, it is clear from evidence of PW3 and the postmortem note Exh.12 that deceased has died a homicidal death. This part of prosecution evidence is not disputed by the defence. Thus, deceased Karamshi was injured in Deluxe Cinema and was taken to Civil Hospital.

When injured reached Civil Hospital, Doctor on duty Mr. L.P. Buch who examined and tried to treat him declared him dead at 17.20 hrs. The said Doctor informed Mr. Mastram PW. 13 Head Constable on hospital duty who recorded the same to the following effect: " Karamshi aged about 55 resident of Bedipara Bharvadsheri, Rajkot who was assaulted and injured by his son with a knife in balacony of Deluxe Cinema is declared dead by Dr. L.P. Buch." This information was conveyed by PW.13 to P.W.14 Bhavdin Tapeshwar, PSO of B-Division Police Station. PW.14 was in charge at the relevant time when the information was conveyed and he has taken down the information sent by Mastram PW 13 as received by him. PW 13 recorded the information in his hospital register

which is at Exh.30 and PW 14 has entered the said information in his register which is at Exh.32. From this evidence, it is clear that Karamshi Sagar was injured by his son in the Deluxe Cinema and was taken to Civil Hospital where he was declared dead. Prosecution by evidence of PW 3 Doctor has proved that the deceased has died a homicidal death.

When it is proved by the prosecution that the deceased had died a homicidal death, the question is: who has committed that act which caused the homicidal death of the deceased. At the time when the deceased was assaulted in the balcony there was hue and cry. The Manager of Deluxe Cinema Mansoor PW.4 was informed by his Assistant Hirabhai to come back to Cinema as some commotion has taken place. When he reached Cinema he heard persons talking that someone is injured. When he reached near balcony he saw one injured bleeding person coming out of balcony. He tried to telephone to police but as his phone was dead he went near the mill from where he telephoned for ambulance and also telephoned to police. He had also learnt that one person is taken away by police. From the evidence of Dhirubhai Mohanlal, PW 8 the prosecution has been able to establish that one person was apprehended by Vinodbhai Policewala from the ladder. Learned Advocate Mr. Nanavaty contended that the evidence of this witness Dhirubhai cannot be accepted on the question of identity of the accused as one arrested by Constable Vinodbhai in view of the admission of the witness in cross-examination that the accused was shown to him by the police on the previous day as person arrested by Vinodbhai Constable. We may not accept the evidence as to identity of accused by this witness, but from his evidence one fact is established that one person from the ladder of balcony was arrested by Vinodbhai Constable. The question is whether that person arrested by Vinodbhai is accused in this case or someone else.

To establish that person apprehended from cinema is the accused, prosecution relies on evidence of Vinod Hematram PW 12. PW 12 in his evidence has deposed " On 20th July, 1988 I was assigned duty of patrolling Deluxe Chowk Kuvadva under Bedipara Police Chowky of B-Division Police Station. My duty was between 12.00hrs to 20.00hrs. I was on duty at 16.00 hrs in my area as before that I had been to Civil Hospital P.M. room in discharge of my duty..... It was about 5 O'Clock that a person came running to me and told me that there is a scuffle in Deluxe Cinema. I rushed towards the gate of balcony of Deluxe Cinema where persons were coming down. At that time one person with a bloodstained dagger in his

hand was coming down. His clothes were bloodstained. That person was coming out alongwith other persons. I caught hold of him and asked his name. He replied his name as Ashok Karamshai. I interrogated him and he replied. Then I took him to Bedipara Police Chowky. I took away the dagger which was in his hand. The said dagger was stained with blood. On searching the person a seathe was found from the belt of his pant. I kept that seathe with me and when P.I. Sonara came I produced the same before him. At that time Karsanbhai was the Constable on duty in Bedipara Police Chowky. He telephonically informed of the same to B-Division Police. When Sonara Saheb came at midnight 12 O'Clock I handed over that person to him. Till then that man was with me." In cross-examination this witness has admitted that he has not filed any written report on producing accused in Bedipara Police Chowky after apprehending him from Deluxe Talkies. He also admitted that there is no written evidence to that effect in station diary of Bedipura Police." Relying on this omission on the part of PW 12 Mr. Nanavaty contended that the act of PW 12 appears to be most unreasonable, impractical and unacceptable. If a Constable apprehends a person with bloodstained dagger and the superior is not informed to that effect for about 7 hours, can such say of such person atleast to this effect be accepted. Viewing this fact from the practical aspect, it is clear that on reaching Bedipara Police Chowky, PW 12 has informed Constable Karsanbhai who was in charge of Bedipara Police Chowky. According to this witness, said Karsanbhai has informed B-Division Police Station of the same. The question is what information is conveyed by Karsanbhai to B-Division Police. PW. 15, Mr. Sonara has received information to the following effect: " That there is some scuffle in Deluxe Talkies". On hearing that he has immediately reached Deluxe Talkies. It is not known that this information of some scuffle at Deluxe Talkies was sent by Karsanbhai Constable before PW.12 Vinodbhai reached Bedipara Police Chowky or after. It is not known by PW 12 that on his reaching Bedipara Chowky with the accused what was the information sent by Karsanbhai to B-Division Police Station. However, fact remained that on receiving information from Bedipara Police Chowky, PI Sonara, PW.15 has left Police Station for Deluxe Cinema and on receiving there the information that the injured is taken to Civil Hospital, he had then gone to Civil Hospital where he recorded the complaint of Bai Mani and sent it to B-Division Police Station. Before the complaint of Bai Mani was recorded information has already reached B-Division Police Station about the demise of Karamshibhai which information, in our opinion,

discloses cognizable offence. Either on the information received by the B-Division Police Station or on the information sent by PI Sonara on recording complaint of Bai Mani he has started investigation. After completing formalities at Civil Hospital and thereafter in Deluxe Cinema, Sonara PW 15 has reached Bedipara Police Chowky. The question is why did PW. 15 go to Bedipara Police Chowky. In our opinion, on completion of formalities in Civil Hospital and Deluxe Cinema there was no reason for PW.15 Mr. Sonara to go to Bedipara Police Chowky if he had no information about accused being apprehended and taken there by PW.12 Vinodbhai. Mr. Nanavaty, learned Sr.Advocate contended that Bedipara Police Chowky is at a distance of 1 minute walk from Deluxe Cinema. So on completion of investigation formalities at Deluxe Cinema he might have formally gone to Bedipara Police Chowky being a Police Chowky under the jurisdiction of his police station. It was at midnight. P.I. Sonara was busy from 5 p.m. till 12.00 midnight. There was no reason for him to go to Bedipara only casually. The fact is that accused was apprehended and was in Bedipara Police Chowky and Mr.Sonara had gone there and necessary formalities were carried out and completed. From the evidence of Dhirubhai, PW.8 it transpires that a person was taken away from Deluxe Cinema by Police Constable. From the evidence of Vinodbhai PW.12, it is clear that he had apprehended one person from Deluxe Cinema at that very time who was lodged in Bedipura Chowky by him upto 12.00 midnight and then handed over to P.I. Sonara when he reached there. From a careful reading of the evidence of PW 8 and PW 12, it is clear that accused was apprehended by Vinodbhai from Deluxe Cinema at about 5.00 p.m. and taken to Bedipara Police Chowky. It is the case of the accused in his further statement that he was arrested by police at midnight from his residence. It is the case of the prosecution that when an arrest Panchnama of accused at Bedipara Police Chowky was made, his person was searched. On personal search of the accused a counterfoil of cienma ticket which is Muddammal article no.5 was found. That counterfoil of cinema ticket is of balcony and of the first show bearing seat no.25 of "B" row. That counterfoil bears rubber stamp of 20th July, 1989. Mr. Nanavaty learned Sr. Advocate has contended that when incident is of 20th July, 1988, how can there be a counterfoil of the year 1989. This very fact suggests planting of the counterfoil to establish an edge to an evidence of arrest of the accused from Deluxe Cinema. We have called for calendar of 100 years from where it is clear that 20th July, 1988 is Wednesday while 20th July, 1989 is Thursday. There is no doubt of the fact that the incident is of 20th July, 1988 when it was

Wednesday. The counterfoil Muddammal article no.5 has also a printed day Wednesday. Therefore, it has been rightly held by the learned Sessions Judge that it is a mistake or some slip of fixing the year in rubber stamp which is applied on the counterfoil. This part of the evidence if accepted presence of accused in Deluxe Cinema at the relevant time is established. Learned Sr. Advocate Mr. Nanavaty contended that in view of this variation in year in the counterfoil, this part of the evidence should not be accepted. We do not agree with the contention of Mr. Nanavaty to reject this evidence of find of counterfoil. There is no reason on our part to refuse to accept the evidence of Mr. Sonara that on search of the accused this counterfoil Muddammal article no.5 was found.

The question is whether accused was arrested at 12.00 midnight, or was he detained in Bedipara Police Chowky from 5.00 p.m. till 12.00 midnight by Vinodbhai and was he involved in the commission of offence. The answer is by incriminating Muddamal clothes found from the person of the accused. At the time when Vinodbhai apprehended accused he had in his hand bloodstained dagger and his clothes were bloodstained. His clothes were seized and were sent to Forensic Science Laboratory. The say of the accused is that he was arrested from his house and after his arrest, the clothes were called from his house. He has denied in his further statement that he had put on clothes article nos.3 and 4 at the time of his arrest. This Court has recorded further statement and the question put was that his clothes were seized by police after his arrest. In reply to the same he has stated that " My clothes were seized after they were called from my residence". From this part of the evidence in the further statement of the accused the fact that emerges is that the police has seized the clothes Muddammal article nos. 3 and 4 which belonged to the accused. The said clothes are found stained with human blood of "A" group which is blood group of the deceased. Accused has not given any explanation that even if the clothes were called from his residence and seized, how they are found stained with blood and that of "A" group which is the blood group of the deceased. Evidence of Forensic Science Laboratory, in our opinion, establishes the fact that the clothes of the accused Muddammal article nos.3 and 4 were found stained with human blood of "A" group. The blood group of the deceased was also of "A" group.

There is an answer to the contention of Sr. Advocate Mr. Nanavaty that P.I. Sonara had no

information that accused was apprehended by Vinodbhai and was in Bedipara Police Chowky. In paragraph (4) of his evidence, he has stated that on going to Bedipara Police Chowky on 21st July, 1988 where accused of this case was with Police Constable Vinodbhai, was arrested after drawing Panchnama of his physical condition as there was evidence against him. In our opinion from this part of the evidence of PW 15, it is clear that he had information that accused was in Bedipara Police Chowky and that made him to go there.

In view of the above discussion, two things emerge conclusively (i) that Karamshi was assaulted in Deluxe Cinema and was taken to Civil Hospital where he was declared dead. The information of the same was sent to B-Division Police Station by Head Constable on Hospital duty Mr. Mastram, PW 13. (ii) that on hearing about assault in Deluxe Cinema from someone, Police Constable Vinodbhai, PW 12 who had his patrolling duty in that area had reached Deluxe Cinema from where he apprehended accused coming down from balcony. Question therefore is whether prosecution is able to link and make a complete chain of these two independent incidents. In our opinion, answer is in affirmative. The deceased is the father of accused. The deceased was taken to Civil Hospital in injured condition from Deluxe Cinema. The accused was apprehended from Deluxe Cinema at the very time when injured was taken to Civil Hospital from that cinema. On personal search of accused counterfoil of cinema ticket of that very Deluxe Cinema of the very show is found. The clothes of the accused are found stained with human blood of Group "A" which is also the blood group of the deceased. The accused has not advanced any explanation as to how his clothes are stained with blood. The case of the accused is of total denial. There is evidence on record that in the information conveyed to the police station from the Civil Hospital, it is disclosed that the son of the deceased has assaulted him. No doubt the name of the son of the deceased is disclosed after Bai Mani reached the hospital. From the evidence of Bai Mani, it is clear that she reached hospital little later than the injured reached the hospital. It was disclosed to the Doctor that the son of the deceased has assaulted him who in his turn informed the constable on duty in the hospital and the Constable on duty in his turn after recording information in his register conveyed the same to the B-Division Police Station. Simultaneously, the accused is apprehended and is found with bloodstained clothes. According to the evidence of PW. 12 Vinodbhai, the accused had with him the dagger which was stained with human blood of "A" group. We do

not find any reason to reject that part of evidence also. Doctor PW.3 has specifically stated that injuries on the person of the deceased could be caused by the weapon Muddammal article no.6.

In view of the above, the chain of circumstances as stated by the learned Sessions Judge in para 40 of his judgment is fully established and it forms a complete chain. The inference which is required to be drawn from this circumstance is the guilt of the accused and nothing else. Deceased died a homicidal death is not disputed in this appeal. Hence, the same is not discussed in detail.

In view of the above discussion, we do not find any reason to interfere with the conclusions arrived at by the learned Sessions Judge as to the guilt of the accused. The appeal is therefore dismissed.

sf-sms